

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
SBC IP Communications, Inc.)	CC Docket No. 99-200
Petition for Limited Waiver of)	
Section 52.15(g)(2)(i) of the)	
Commission's Rules Regarding)	
Access to Numbering Resources)	

**AT&T COMMENTS IN OPPOSITION TO SBCIP
PETITION FOR LIMITED WAIVER**

Pursuant to the Commission's Public Notice in the above-captioned proceeding,¹ and sections 1.415 and 1.419 of the Commission's rules,² AT&T Corp. ("AT&T") submits these Comments in Opposition to the Petition filed by SBC IP Communications, Inc. ("SBCIP"), for a limited waiver of Section 52.15(g)(2)(i) of the Commission's rules, which provides that numbering resources may be assigned only to state-certificated common carriers.³ SBCIP seeks to obtain numbering resources directly from the

¹ SBC IP Communications, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources, CC Docket No. 99-200, DA 04-2144 (rel. July 16, 2004) ("*SBCIP Petition*"). SBCIP is an information service provider affiliate of SBC Communications, Inc.

² 47 C.F.R. §§ 1.415 and 1.419.

³ Section 52.15(g)(2)(i) of the Commission's rules provides that an applicant seeking North American Numbering Plan ("NANP") numbering resources must be "authorized to provide service in the area for which the numbering resources are being requested." *See* 47 C.F.R. § 52.15(g)(2)(i). The Commission has interpreted this rule to require carriers to provide, as part of their applications for additional numbering resources, "evidence (*e.g.* state commission order or state certificate to operate as a carrier) demonstrating that

North American Numbering Plan Administrator (“NANPA”) and/or the Pooling Administrator (“PA”) for use in deploying IP-enabled services, including Voice Over Internet Protocol (“VoIP”) services, on a commercial basis to residential and business customers.⁴ AT&T believes SBCIP’s petition should be denied, and that Section 52.15(g)(2)(i) of the Commission’s rules should remain in effect until the Commission adopts final numbering rules in the *IP-Enabled Services* proceeding.⁵

Pursuant to Section 1.3 of the Commission’s rules, the Bureau may waive a rule upon a showing of “good cause.”⁶ Under this “good cause” standard, the Bureau may exercise its discretion to waive a rule, but only where the particular facts before it make strict compliance inconsistent with the public interest.⁷ In the exercise of its discretion, the Bureau may take into consideration certain special circumstances, such as hardship to the parties,⁸ but a waiver of the Commission’s rules is appropriate only when special

they are licensed and/or certified to provide service in the area in which they seek numbering resource[s].” Information service providers are not eligible for assignment of NANP telephone numbers under the existing rules. *Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking* (“*NRO Report and Order*”), 15 FCC Rcd 7574, 7613 ¶ 97 (2000).

⁴ *SBCIP Petition*, at 1.

⁵ *See IP-Enabled Services*, WC Docket No. 04-36, *Notice of Proposed Rulemaking*, 19 FCC Rcd 4863, 4915 ¶ 76 (2004) (“*IP-Enabled Services NPRM*”).

⁶ *See* 47 C.F.R. § 1.3.

⁷ *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *Midwest Wireless Iowa, LLC Petition for Waiver of Sections 54.313(d) and 54.314(d) of the Commission’s Rules and Regulations*, CC Docket No. 96-45, *Order*, DA 04-1688 ¶ 3 (rel. June 14, 2004).

⁸ *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular, supra*, 897 F.2d at 1166.

circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.⁹

The *SBCIP Petition* presents no special circumstances that warrant any deviation from the general rule limiting the assignment of numbering resources to state-certificated carriers. Typically, IP providers purchase generally available Primary Rate Interface ISDN lines from local exchange carriers (“LECs”), using this retail product to interconnect with the public switched telephone network so they can send and receive certain types of traffic between their IP networks and the carriers’ networks.¹⁰ Under these purchasing arrangements, the LEC obtains the necessary telephone numbers for the IP provider in the ordinary course, and terminates IP traffic on the public switched telephone network or delivers the traffic to another carrier for termination on the network. The *SBCIP Petition* presents no evidence that SBCIP or others have experienced difficulty in obtaining numbers, or that the LECs have impeded the process in any manner.

At bottom, the *SBCIP Petition* is a thinly veiled attempt to tilt the competitive playing field in SBCIP’s favor by obviating the need for SBCIP to obtain numbering resources from competitive carriers. While SBCIP claims that direct access to numbering resources will encourage more efficient commercial arrangements for the exchange of traffic between VoIP providers and LECs, the underlying intent of the *SBCIP Petition* is apparent:

⁹ *Northeast Cellular, supra*, 897 F.2d at 1166.

¹⁰ VoIP providers generally convert VoIP traffic from IP format to circuit-switched format before delivering that traffic to a LEC. *See SBCIP Petition*, at 2-3 and fn 5.

“By allowing SBCIP to ‘bring its own numbering resources’ to interconnection discussions with carriers, SBCIP believes it will be able to work more effectively with these carriers to negotiate commercial arrangements for the large-scale deployment of VoIP services. This will give SBCIP greater flexibility with respect to the design of its network and the services it offers, which will ultimately lead to greater benefits for its customers.”¹¹

No public interest is served by requiring the Commission and the industry to implement special interim measures that provide SBCIP with a competitive edge and additional leverage in its negotiations with competitive carriers.

SBC is well aware that Section 52.15(g)(2)(i) of the Commission’s rules is currently under consideration in the Commission’s *IP-Enabled Services* proceeding, but claims that “[g]ranted SBCIP’s waiver request will in no way prejudice the outcome of that proceeding.”¹² In the *IP-Enabled Services NPRM*, the Commission sought comment on “whether any action relating to numbering resources is desirable to facilitate or at least not impede the growth of IP-enabled services, while at the same time continuing to maximize the use and life of numbering resources in the North American Numbering Plan.”¹³ Recognizing that the competitive environment is undergoing fundamental change, the Commission sought and received numerous comments on proposals to modify Section 52.15(g)(2)(i).¹⁴ A grant of the relief SBCIP requests while the Commission is considering proposals on the very same subject would end run the

¹¹ *SBCIP Petition*, at 5.

¹² See *IP-Enabled Services NPRM*, 19 FCC Rcd 4863, ¶ 76; *SBCIP Petition*, at 11.

¹³ *IP-Enabled Services NPRM*, ¶ 76.

¹⁴ *Id.* See, e.g. Comments of Consumers Union, at 27; Reply Comments of AT&T, at 25; CTC, at 4; EarthLink, at 8-9; Level 3 Communications, at 17; Nebraska PSC, at 4; Pac-West Telecomm, at 15; T-Mobile, at 8-9; Verizon, at 38.

pending notice and comment proceeding for no better reason than to provide a special dispensation for SBCIP. Worse yet, the relief requested could cause the Commission and carriers prematurely to expend substantial time and incur significant costs deploying networks, services and numbering resources in a manner that the Commission may ultimately find unacceptable, or in need of substantial modification.

SBCIP blandly asserts that if it is given direct access to numbering resources through NANPA, it will fully comply with the Commission's thousand-block pooling, local number portability and numbering resource optimization requirements.¹⁵ SBCIP further states that it "intends to meet the 'facilities readiness' requirement of Section 52.15(g)(2)(ii)."¹⁶ The Commission has made it clear that applications for initial numbering resources requirements are not routinely granted, stating "[t]he burden is on the carrier to demonstrate that it is both authorized and prepared to provide service before receiving initial numbering resources [citations omitted]."¹⁷ In particular, the "facilities readiness" requirement, an important indicator of a number applicant's intention and ability to use the numbers it receives, requires the applicant to show that "its facilities are in place or will be in place to provide service within sixty (60) days of the numbering

¹⁵ *SBCIP Petition*, at 10. *See also* SBC IP-Enabled Services Comments, WC Docket No. 04-36, at 87-88.

¹⁶ *SBCIP Petition*, at 10.

¹⁷ *NRO Report and Order*, *supra*, ¶ 97. The Commission directed the NANPA to withhold initial numbering resources from any carrier that does not comply with these requirements, stating (at ¶ 99) that "[t]his requirement of additional information from applicants for numbering resources is to prevent actual or potential abuses of the number allocation process."

resources activation date.”¹⁸ While SBCIP states that it “expects favorable results” from its limited, non-commercial trial of VoIP services,¹⁹ the Commission’s facilities readiness requirements cannot be met by predictions or promises of future compliance. In light of SBC’s failure to provide adequate support for these assertions, the Commission must conclude that granting SBCIP’s limited waiver will undercut rather than advance the Commission’s numbering resource optimization policies and objectives.²⁰

SBCIP additionally claims that granting a limited waiver of Section 52.15(g)(2)(i) will further Congress’s intent by fostering the deployment of new services and technologies to American consumers under minimal regulation.²¹ Indeed, as Congress stated, the fundamental purpose of the 1996 Act is to provide a “pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans.”²² Rather than furthering Congress’s intent that the deployment of

¹⁸ *NRO Report and Order*, ¶ 97. See also 47 C.F.R. § 52.15(g)(2)(ii) (requiring that the applicant for initial numbering resources “is or will be capable of providing service within 60 days of the numbering resources activation date.”)

¹⁹ *SBCIP Petition*, at fn.2. The Bureau only recently granted special temporary authority to SBCIP to obtain numbering resources from the PA for the purposes of conducting a limited, non-commercial trial of VoIP services. *Administration of the North American Numbering Plan*, CC Docket No. 99-200, *Order*, DA 04-1721 (rel. June 17, 2004).

²⁰ As the Commission made clear in the *NRO Report and Order* (at ¶ 96), permitting carriers to build numbering inventories before they are prepared to offer service “results in highly inefficient distribution of numbering resources and is counterproductive to our goal of optimizing the use of numbering resources.”

²¹ *SBCIP Petition*, at 8.

²² 47 U.S.C. § 230(b)(2). In Section 230, Congress proclaimed, “[i]t is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”

such services occur in a deregulatory environment, however, SBCIP's proposed waiver will do the opposite, imposing a vestigial and impermanent tier of numbering regulation in a field in which additional regulation is neither necessary nor warranted.

SBCIP argues that “in many cases it will not be the most efficient or cost-effective means for a VoIP provider to send originating traffic to the public switched telephone network because it requires separate interconnection, with potentially multiple end office switches, using access products that may be limited in terms of availability and scalability,”²³ and claims that if given the numbering resources it requests, SBCIP can utilize its soft switch and gateways to offer services more efficiently.²⁴ The *SBCIP Petition* thus brings to the surface the much larger question of how IP providers will interconnect with the public switched telephone network in the future, raising in turn a host of complicated issues that far exceed the scope of this proceeding. The relief requested by SBCIP would in any event require the Commission to fashion alternative interconnection and compensation rules for VoIP providers on an interim basis without reason, since VoIP providers currently experience no difficulty in obtaining numbers from LECs connected to the public switched telephone network.

²³ *SBCIP Petition*, at 3.

²⁴ *SBCIP Petition*, at 5. A “gateway” or “media gateway” is a device that can receive circuit-switched, traffic and packetize it for delivery to an IP-based network, or vice versa. A media gateway can be combined with, or separate from, a soft switch, which routes packetized traffic on the IP-based network.

CONCLUSION

The Commission should not permit SBCIP to end run the *IP-Enabled Services* proceeding by obtaining numbers directly from the NANPA or the PA. Today, VoIP providers like SBCIP have no trouble obtaining numbers by partnering with LECs connected to the public switched telephone network. The Commission's rule limiting the availability of numbers to certified telecommunications carriers continues to play an important role in ensuring that finite numbering resources are used efficiently. SBCIP has failed to show any special circumstance or immediate need warranting a waiver of the Commission's rule and accordingly, its Petition should be denied.

Respectfully submitted,

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